IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.13721 of 2007
SHIVJAG SINGH & ORS
Versus
STATE OF BIHAR & ANR

For the petitioners : Mr. Tribhuwan Narayan, Advocate
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For O.P. No. 2 : Mr. Rajesh Kr. Mishra, Advocate

O R D E R

The petitioners who have been impleaded as accused in Complaint Case No. 917 of 2006 have prayed for quashing of the order dated 19.2.2007 passed by Sri Jagarnath Ram, learned Presiding Judge, Fast Track Court No. V, Kaimur at Bhabhua in Cr. Revision No. 205 of 2006, whereby he, in allowing the aforesaid revision filed by O.P. No. 2, has set aside the order of dismissal of complaint passed on 14.11.2006 by the learned Chief Judicial Magistrate, Bhabhua .

WEB COPY NOT OFFICIAL

The complainant, one Paramhans Singh, impleaded herein as O.P.No. 2 filed the aforesaid complaint against ten named persons including the petitioners herein inter alia alleging the commission of offences under sections 419, 420, 465, 466, 467, 468, 469, 471, 504, 323, 341, 120B I.P.C on 18.6.2001, 2.12.2002 and 3.10.2006. According to

the complainant he is employed as a constable in the Railway Protection Force at Mumbai. It has been alleged that his brother Ramyag Singh (since deceased) and Shivjag Singh (petitioner no. 1) have surreptitiously and fraudulently sold lands through sale deeds dated 18.6.2001 in favoaur of Ramraj Singh, Kanta Singh, Babu Ram Singh and Nanda Singh and 1258 dated 2.12.2002 in favour of Ram Awadh Singh by incorporating the name of the complainant in the column of vendor along with the two brothers and had even forged his signature. It is further alleged that Chandrika Singh, petitioner no. 6 and Shivpujan Singh having entered into criminal conspiracy with his two brothers identified the signature of the complainant .

WEB COPY NOT OFFICIAL

It appears that at the inquiry under section 202 Cr.P.C. , three witnesses were examined on behalf of the complainant who belonged to different villages and happened to be the brother-in-law of the complainant and his son – in – law and on consideration of the materials on record the learned Chief Judicial Magistrate by his order dated 14.11.2006 formed the opinion that no prima facie

case under the sections mentioned had been made out against the accused and there being no sufficient grounds to proceed against them dismissed the complaint petition. Aggrieved by the order of the learned Chief Judicial Magistrate the complainant preferred Criminal Revision No. 205 of 2006 before the Sessions Judge, which was allowed by the learned Presiding Judge, Fast Track Court No. V by his order dated 19.2.2007. In allowing the revision the learned Sessions Court was of the opinion that a forgery, cheating and conspiracy had been committed by the accused persons and a prima facie case thereunder had been made out even against the attesting witnesses and the scribe.

WEB COPY NOT OFFICIAL

The primary grievance of the petitioners is that the leaned Fast Track Court had completely misdirected itself in setting aside the order of the learned Chief Judicial Magistrate since from the allegations made in the complaint petition and evidence adduced at the inquiry under section 202 Cr.P.C. a case purely of civil nature had been made out and a criminal prosecution for the same was neither warranted nor sustainable, more so when Title Suit No.

252 of 2006 had already been filed by the complainant before Subordinate Judge I, Kaimur at Bhabhua for declaration that the sale deeds no. 6455 dated 18.6.2001 was forged and Title Suit No. 253 of 2006 had been filed for similar reliefs in respect of sale deed no. 12582 dated 2.12.2002, whereby petitioner no. 1 had allegedly alienated lands of his share. Relevant documents and the plaints of the suit aforesaid have been filed in support of the submissions.

Many other contentions were sought to be raised by the learned counsel for the petitioners in assailing the finding recorded by the learned Revisional Court to persuade me to hold that in view of a proceeding pending before the Civil Court the Criminal Court had no jurisdiction to decide the issue in question.

WEB COPY NOT OFFICIAL

I have had the occasion to go through the orders passed by the learned Chief Judicial Magistrate as also the Revisional Court and I am firmly of the opinion that even taking the prosecution case to be true on its face value, as it transpires from the petition of complaint, no offence either for fabricating document or conspiracy hatched by

the accused has been made out.

Regard being had to the nature of issue, which to my mind is absolutely civil in nature, the learned Chief Judicial Magistrate was fully justified in dismissing the complaint and in my mind the learned Fast Track Court had erred in setting aside the order of the learned Chief Judicial Magistrate and holding that a prima facie case in criminal prosecution had been made out.

In the result the application is allowed and the order of the Revisional Court is hereby quashed and the order passed by the learned Chief Judicial Magistrate is restored.

WEB COPY NOT OFFICIAL

(Abhijit Sinha, J.)

The Patna High Court
The 18th July, 2008
Spd/ A.F.R.